

201 KAR 22:052. Complaint procedure and disciplinary action of a credential holder or applicant.

RELATES TO: KRS 327.020, 327.040, 327.070

STATUTORY AUTHORITY: KRS 327.040(2), (11), (14)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(11) authorizes the board to promulgate and enforce reasonable administrative regulations for the effectuation of the purposes of KRS Chapter 327. KRS 327.040(14) authorizes promulgation of administrative regulations governing the physical and mental examination of credential holders or applicants who may be impaired by reason of a mental, physical, or other condition that impedes his or her ability to practice competently. KRS 327.040(2) authorizes the board to investigate every alleged violation and take action, as appropriate. This administrative regulation is necessary to establish the procedure for filing a complaint and the action to be taken by the board on a complaint and disciplinary action against a credential holder or applicant in violation of KRS 327.020.

Section 1. Definitions. (1) "Complaint Committee" means a committee of the board that:

- (a) Reviews an initiating complaint;
- (b) Determines whether an investigation should be conducted; and
- (c) Directs and reviews an investigation of the respondent.

(2) "Formal complaint" means a formal administrative pleading authorized by the board that sets forth a charge against a credential holder or applicant and commences a formal disciplinary proceeding under KRS Chapter 13B.

(3) "Initiating complaint" means any complaint that a person has allegedly violated the requirements of KRS Chapter 327 or the administrative regulations of the board.

(4) "Respondent" means the person against whom an initiating complaint or formal complaint has been made.

Section 2. Initiating Complaint. (1) A complaint may be initiated by:

- (a) A member of the public;
- (b) or government agency; or
- (c) The board.

(2) An initiating complaint shall:

(a) Be made in writing to the board and signed by the complainant unless the nature of the initiating complaint alleges an immediate danger to the health, safety and welfare of the public; and

(b) Bear the date of the complaint.

(3) The board may, at any time, conduct an investigation on its own initiative without receipt of a written complaint if the board has reason to believe that there may be a violation of KRS Chapter 327 or the administrative regulations of the board.

(4) A certified copy of a court record for conviction of a misdemeanor or felony shall be considered a valid initiating complaint.

(5) An initiating complaint may be received by:

- (a) A board member;
- (b) The Office of the Attorney General; or
- (c) A staff member.

Section 3. Consideration of Initiating Complaint. (1) Review of an initiating complaint shall take place:

- (a) At the next regularly-scheduled meeting of the complaint committee; or
 - (b) As soon as practicable.
- (2) The Complaint Committee:
- (a) Shall:
 - 1. Review the initiating complaint;
 - 2. Determine if an investigation is warranted; and
 - 3. If investigation is warranted, appoint one (1) of its members or an agent or representative of the board to conduct an investigation of the respondent.
 - (b) May be assisted by:
 - 1. Board staff;
 - 2. A board agent; or
 - 3. The Office of the Attorney General.
- (3) If there is reasonable cause to believe that a credential holder or applicant may be physically or mentally incapable of practicing physical therapy with reasonable skill and safety to clients:
- (a) The board may order the credential holder or applicant to submit to an examination by a psychologist, physician, or certified alcohol and drug counselor designated by the board to determine the credential holder's or applicant's psychological or physical status to practice physical therapy.
 - (b) The expense of this examination may be incurred by the board.
 - (c) The board shall then consider the findings and conclusion of the examination and the final investigative report at its next regularly-scheduled meeting or soon thereafter.
 - (4) Notice to respondent.
 - (a) The board shall notify the respondent of the receipt of the initiating complaint and the essential contents of the initiating complaint. The board may keep the complainant's name confidential until completion of any board investigation.
 - (b) Respondent shall file a reply to the initiating complaint with the board within twenty (20) days after receipt of notice of the initiating complaint.
 - (c) Failure of the respondent to file a timely reply to the initiating complaint shall constitute a violation of a board order or administrative regulation and shall be grounds for disciplinary action under KRS 327.070(2)(k).
 - (5) Based on consideration of the initiating complaint and the investigative report, the board shall determine if there has been a prima facie violation upon summary and recommendation by the complaint committee. The members of the complaint committee shall not vote on this determination.
 - (6) If it is determined that the facts alleged constitute a prima facie violation, the board:
 - (a)1. Shall issue a formal complaint, in accordance with KRS Chapter 13B, against the credential holder or applicant; and
 - 2. May order that a written response be filed with the board; or
 - (b) If it is determined that there is a prima facie violation of KRS 327.020, shall proceed under KRS 327.040(2).

Section 4. Procedures for Disciplinary Hearings. (1) All procedures for disciplinary hearings shall conform to KRS Chapter 13B.

(2) Testimony to be considered by the board, hearing panel, or hearing officer, if any, may be taken by deposition. A party or witness may be allowed to testify by deposition, rather than attend the hearing, upon a showing of inability to attend and a showing that other parties shall have an opportunity to cross-examine at said deposition. The presiding officer or hearing

officer, if any, shall rule upon motions to allow testimony to be considered by deposition. Other depositions shall not be allowed.

(3) The presiding officer or hearing officer, if any, may order that at least five (5) days prior to the hearing, each party shall file a summary of each witness' expected testimony.

Section 5. Final Disposition. (1) Upon reaching a decision, the board shall notify, in writing by certified mail, the complainant and respondent of its final disposition of the matter.

(2) The board shall make public:

(a) Its final order in a disciplinary action under KRS 327.070(1)(a)-(e) and (g).

(b) An action to restrain or enjoin the noncredentialed practice of physical therapy.

Section 6. Settlement by Informal Proceedings. (1) The board through counsel and the complaint committee may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chairman.

(3) The board may employ mediation as a method of resolving the matter informally. (7 Ky.R. 864; eff. 6-3-81; Am. 11 Ky.R. 417; eff. 10-9-84; 12 Ky.R. 217; eff. 9-10-85; 13 Ky.R. 904; eff. 12-2-86; 16 Ky.R. 2440; eff. 8-17-90; 21 Ky.R. 1363; eff. 1-9-95; 28 Ky.R. 917; 1356; eff. 12-19-2001; 29 Ky.R. 1308; eff. 1-15-03; 31 Ky.R. 810; 1065; eff. 1-4-05.)